

AMENDING THE ARTICLES OF WAR TO IMPROVE THE ADMINISTRATION OF MILITARY JUSTICE, TO PROVIDE FOR MORE EFFECTIVE APPELLATE REVIEW, TO INSURE THE EQUALIZATION OF SENTENCES, AND FOR OTHER PURPOSES

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JULY 22, 1947.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ELSTON, from the Committee on Armed Services, submitted the following

## REPORT

[To accompany H. R. 2575]

The Committee on Armed Services, to whom was referred the bill (H. R. 2575) to amend the Articles of War to improve the administration of military justice, to provide for more effective appellate review, to insure the equalization of sentences, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 2, line 13, strike "members of the Army Nurse Corps,".

On page 2, line 14, strike "flight officers,".

On page 2, line 25, following the period after the word "trial" inserts the following paragraph:

All warrant officers in the active military service of the United States and warrant officers in the active military service of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on general and special courts-martial for the trial of warrant officers and enlisted persons, and persons in this category shall be detailed for such service when deemed proper by the appointing authority.

On page 3, strike lines 1 to 7, inclusive, and substitute the following:

Enlisted persons in the active military service of the United States or in the active military service of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on general and special courts-martial for the trial of enlisted persons when requested in writing by the accused at any time prior to the convening of the court. When so requested, no enlisted person shall, without his consent, be tried by a court the membership of which does not include enlisted persons to the number of at least one-third of the total membership of the court.

On page 3, line 21, substitute "5" for "2".

On page 4, lines 22 and 23, strike "an officer admitted to practice law in a court of the judicial system of the United States or in" and substitute therefor "an officer who is a member of the bar of a Federal court or of".

On page 6, lines 5 and 6 strike "admitted to practice law in a court of the judicial system of the United States" and substitute "who are members of the bar of a Federal court"; in line 7, substitute "of" for "in".

On page 6, lines 10 and 11, strike "admitted to practice law in a court of the United States" and substitute therefor "who is a member of the bar of a Federal court"; in line 11, after "or", substitute "of" for "in".

On page 6, lines 14 and 15, strike "admitted to practice law in a court of the judicial system of the United States" and substitute "who is a member of the bar of a Federal court"; in line 15, substitute "of" for "in."

On page 6, line 21, strike the word "officer" and substitute the word "person."

On page 6, line 23, following the word "counsel" strike "or" and following the words "assistant defense counsel" insert "or investigating officer".

On page 6, line 24, following the word "act" insert "in any capacity as a member of the prosecution or defense or act".

On page 7, line 14, following the word "articles:" delete the proviso on lines 14, 15, and 16 and in line 17 strike "further".

On page 7, line 22, insert a period after the word "prescribed" and delete the remainder of the sentence on lines 22, 23, and 28.

On page 8, line 9, substitute a colon for the period following the word "punishment" and insert:

*Provided further,* That a bad-conduct discharge shall not be adjudged by a special court-martial unless a complete record of the proceedings of and testimony taken by the court is taken in the case.

On page 8, lines 13 and 14, strike "a member of the Army Nurse Corps," and strike "flight officer."

On page 16, line 22, following the word "discipline." insert:

The accused shall be permitted, upon his request, to be represented at such investigation by counsel of his own selection, civil counsel if he so provides, or military if such counsel be reasonably available, otherwise by counsel appointed by the officer exercising general courts-martial jurisdiction over the command.

On page 19, line 13, following the word "until" insert "in addition to the approval of the convening authority".

On page 23, line 18, strike the word "may" and insert the word "shall".

On page 33, line 15, following the word "Court." insert:

No authority appointing a general, special, or summary court-martial nor any other commanding officer, shall censure, reprimand, or admonish such court, or any member thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise, by such court or any member thereof, of its or his judicial responsibility.

On page 33, line 15, strike "Any" and substitute "No"; strike "who" and substitute "shall" and strike the letter "s" in the word "attempts"; in line 20, following the word "acts" insert a period in lieu of the comma and strike on lines 20 and 21 "shall be punished as a court-martial may direct."



On page 35, line 12, article 94 is amended to read as follows:

ART. 94. **Frauds Against the Government.**—Any person subject to military law who makes or causes to be made any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures, or advises the making or use of, any writing or other paper knowing the same to contain any false or fraudulent statements; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes or procures, or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures, or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures, or advises the use of any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States; or

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipment, ammunition, clothing, subsistence stores, money, or other property of the United States furnished or intended for the military service thereof: *Provided*, That any person, subject to military law, who commits larceny or embezzlement with respect to property of the United States, furnished or intended for the military service thereof, or with respect to other property within the purview of this article, steals said property within the meaning of this article; or

Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same; or

Who enters into any agreement or conspires to commit any of the offenses aforesaid;

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court martial may adjudge, or by any or all of said penalties. If any person, being guilty of any of the offenses aforesaid or who steals or fails properly to account for any money or other property held in trust by him for enlisted persons or as its official custodian while in the military service of the United States, receives his discharge or is dismissed or otherwise separated from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court martial in the same manner and to the same extent as if he had not been so separated therefrom.

On page 37, line 8, strike "or flight officer".

On page 39, line 3, strike "COUNCIL" and substitute "COUNSEL".

On page 40, line 17, strike "fourth" and substitute "eighth".

On page 40, following section 45 add the following new sections: Section 46, section 47, section 48, and section 49. They are as follows:

SEC. 46. Section 8 of the National Defense Act, as amended (10 U. S. C. 61), is amended to read as follows:

"SEC. 8. JUDGE ADVOCATE GENERAL'S CORPS.—The Judge Advocate General's Corps shall consist of one Judge Advocate General with the rank of major general, one assistant with the rank of major general, three officers with the rank of brigadier general, and an active list commissioned officer strength to be determined by the Secretary of War, but such strength shall not be less than 1½ per centum of the authorized active list commissioned officer strength of the Regular Army, and in addition warrant officers and enlisted men in such numbers as the Secretary of War shall determine."

SEC. 47. Regular Army officers shall be permanently appointed by the President, by and with the advice and consent of the Senate, in the Judge Advocate General's Corps in the commissioned officer grades of major general, brigadier general, colonel, lieutenant colonel, major, captain, and first lieutenant. The names of commissioned officers of the Judge Advocate General's Corps below the grade of brigadier general shall be carried on the Judge Advocate's promotion list, the Judge Advocate's promotion list shall be established by entering thereon the names of the officers concerned without change in their order of precedence on the existing promotion list. The authorized numbers in each of the several grades in the Judge Advocate's promotion list shall be prescribed by the Secretary of War, but the numbers thus authorized shall not exceed the following percentages of the total strength authorized for that list: 8 per centum in the grade of colonel; 14 per centum in the grade of lieutenant colonel; 19 per centum in the grade of major; 23 per centum in the grade of captain; and 36 per centum in the grade of first lieutenant: *Provided*, That numbers may be authorized for any grade in lieu of authorization in higher grades: *Provided further*, That this provision shall not operate to require a reduction in permanent grade of any officer now holding permanent appointment.

Officers whose names are carried on the Judge Advocate's promotion list shall be promoted to the several grades as now or hereafter prescribed for promotion of promotion-list officers generally and the authorized numbers in grades below colonel on such list shall be temporarily increased from time to time in order to give effect to the promotion system now or hereafter prescribed by law for promotion-list officers.

Within the authorized strength of the Judge Advocate General's Corps additional officers may be appointed by transfer of qualified officers from other branches of the Army, by appointment of Reserve judge advocates or qualified civilian graduates of accredited law schools. Those originally appointed in the Regular Army in the Judge Advocate General's Corps shall be credited with an amount of service for the purpose of determining grade, position on promotion list, permanent-grade seniority, and eligibility for promotion as now or hereafter prescribed by law.

SEC. 48. The Judge Advocate General shall, in addition to such other duties as may be prescribed by law, be the legal adviser of the Secretary of War and of all officers and agencies of the War Department; and all members of the Judge Advocate General's Corps shall perform their duties under the direction of the Judge Advocate General.

SEC. 49. Notwithstanding any other provisions of law, the Judge Advocate General, the Assistant Judge Advocate General, and general officers of the Judge Advocate General's Corps shall be appointed by the President, by and with the advice and consent of the Senate, from among officers of the Judge Advocate General's Corps who are recommended for such positions by the Secretary of War. Upon the appointment of an officer to be the Judge Advocate General or Assistant Judge Advocate General with the rank of major general, he shall at the same time if not then holding permanent appointment in such grade be appointed a permanent major general of the Regular Army.

The purpose of the bill is to amend the Articles of War and improve the Army system of justice.

In order that the members may have a full appreciation of the importance of the legislation which is presented here today, I consider it both advisable and necessary to relate, in a general way, the events which have brought the subject of military justice to our attention.



During the course of World War II approximately 11,000,000 men saw service in the United States Army and of that number approximately 80,000 were convicted by general courts martial. A far larger number were convicted by special courts martial. Even before the cessation of hostilities it was apparent to the War Department and to the Congress that a detailed study of the Army system of justice was appropriate, if not mandatory. Accordingly, in 1944 and 1945, the War Department sent Col. Phillip McCook, former prominent New York jurist, to various theaters of operation to conduct such studies. Additional reports were submitted to the War Department from other sources.

Within a few months after the end of hostilities, the matter was brought to the attention of the American Bar Association and on March 25, 1946, the War Department Advisory Committee on Military Justice was appointed by order of the Secretary of War. The Committee, under the chairmanship of the Honorable Arthur T. Vanderbilt, and referred to as the Vanderbilt committee consisted of nine outstanding lawyers and Federal jurists from eight States and the District of Columbia. From March 25, 1946, until December 13, 1946, a period of almost 9 months, the members of that committee engaged in studies, investigations, and hearings, and availed themselves of voluminous statistical data of the Judge Advocate General's Department and other sources. At full committee hearings in Washington, the Secretary of War, and Under Secretary of War, the Chief of Staff, the Commander of the Army Ground Forces, the Judge Advocate General, the Assistant Judge Advocate General, numerous other officers, and the representatives of five veterans' organizations were heard. There were numerous personal interviews, supplemented by letters and the digesting of 321 answers to questionnaires from both military and nonmilitary personnel. Additional widely advertised regional public hearings were held at New York, Philadelphia, Baltimore, Raleigh, Atlanta, Chicago, St. Louis, Denver, San Francisco, and Seattle. The subsequent report of the committee was based on these extensive inquiries.

During the Seventy-ninth Congress, a Military Affairs Subcommittee under the chairmanship of the Honorable Carl T. Durham, devoted more than 1 year to detailed study of the Army system of justice. The report of the Durham committee has been thoroughly considered in our deliberations.

Additional studies have been conducted by special committees of the American Legion, VFW, AMVETS, AVC, the New York County Lawyers Association, the War Veterans' Bar Association, the Judge Advocate Generals' Association, and the Phi Alpha Delta law fraternity. The reports and recommendations of each of these groups were made available to the Armed Services Committee and representatives of each of the organizations appeared before the committee in public hearings in support of their recommendations. Other witnesses, who had particular knowledge of the subject by virtue of their service and experience in the recent war, were heard.

In our opinion, the combined efforts of these organizations and individuals represent the most comprehensive study of military justice that has been conducted in the history of our country.

Any discussion of the technical aspects of the bill would probably result in more confusion than may exist at the present. In general, the main accomplishments of the bill may be outlined as follows:

1. Enlisted men have been authorized to sit as members of a courts martial.
2. It subjects officers to trial by special courts martial.
3. It prohibits the unlawful influence of courts martial or the members thereof.
4. Warrant officers are authorized to sit as members of a courts martial.
5. An accused, if he so desires, may have counsel at the pretrial investigation.
6. Authority to grant a bad-conduct discharge has been granted to general and special courts martial.
7. The review and appellate provisions have been strengthened.
8. A lesser punishment than death or life imprisonment for murder or rape has been provided.
9. A lesser punishment than dismissal from service for officers drunk during time of war has been provided.
10. The authority of commanding officers under the one hundred and fourth article of war has been increased so far as it pertains to officers but not to enlisted men.
11. A separate Judge Advocate General's Corps has been established.

From the foregoing general summary, the following points merit additional consideration:

1. Should enlisted men be authorized to sit as members of a court martial in the trial of other enlisted men?

The War Department agrees that they should, at the option of the appointing authority. Our committee agrees that they should, at the option of the defendant and has amended section 3 accordingly. We seriously doubt that the inclusion of enlisted men as members of the court will benefit enlisted men who are defendants, however, the choice is properly a right of the defendant. Once having exercised that right he must assume the responsibility for the results of his choice.

2. Should the trial judge advocate and defense counsel be attorneys, if available?

There is unanimous agreement that such personnel must be attorneys and the War Department has so provided in section 8, pages 5 and 6.

3. A greater equality in the treatment of officers and enlisted men should be provided.

The committee agrees that a greater equality must be attained and has accordingly amended section 10, page 7, making officers subject to trial by special courts martial. Heretofore, the President has had authority to exempt such classes as he may designate from trial by special and summary courts martial and under that authority has exempted officers from trial by these two courts. As a result, officers have been triable by general courts martial only. This resulted in a reluctance on the part of superior commanders to subject officers to trial and possible dismissal for comparatively minor offenses. As a result, officers would escape punishment for the same offenses for which enlisted men were tried and convicted.



Section 21, page 16, provides that, in time of war, an officer, in lieu of a dishonorable discharge, may be reduced to the grade of private.

Since a commanding officer's authority under the one hundred and fourth article of war has been increased in this bill so that he may forfeit one-half of an officer's pay for 3 months, rather than 1 month, a far greater restraint on officers will be the inevitable result. Enlisted men are not subject to this increased power of forfeiture.

4. Should the pretrial investigation be made mandatory and should accused be furnished counsel at such investigation?

This question presents a more difficult problem than is apparent. In our consideration of the subject of military justice we have been guided by the principle that the basic rights of an accused should be protected without encumbering the military system in such a maze of technicalities that it fails in its purpose. Upon this premise we have concluded that an investigation should precede every general courts-martial trial but that the investigation should be considered sufficient if it has substantially protected the rights of the accused. To hold otherwise would subject every general courts-martial case to reversal for jurisdictional error on purely technical grounds.

Our committee has added another safeguard in amending section 22 by providing counsel in every pretrial investigation upon the request of the accused. As a matter of custom the Army already provides such counsel in serious cases. It now becomes a matter of right, at the option of the accused.

5. A more adequate review should be provided.

Any system of judicial review is complicated, technical, and difficult to understand. The principal provisions of judicial review are presently contained in articles of war 50 and 50½. In an attempt to clarify these sections they have been rewritten by the War Department in section 26 of the bill. The new section provides for a new judicial council of three general officers, in addition to the present board of review, and defines the action to be taken upon cases examined. The section makes explicit the finality of sentences of court martial, and, for the first time, authorizes reviewing authorities to weigh the evidence in addition to determining the law. Absence of this authority heretofore has been a common cause of criticism.

Under the present Army system it is possible for a defendant to be convicted and dishonorably discharged without having had an appellate review of the dishonorable discharge portion of his sentence. Not only is it possible, there have been many such cases, resulting in extensive criticism of the Army system. The War Department has corrected this situation in section 26 (e) of the bill.

Section 28 of the bill provides that the Judge Advocate General shall have clemency power, such power to be exercised under the direction of the Secretary of War. This matter was considered by the Legal Subcommittee of the Armed Services Committee in connection with the powers of reviewing authorities. The practical result of the law is that the Judge Advocate General becomes a recommending officer and has no independent authority to exercise the power of clemency. Due to the wide disparity in sentences given for similar offenses, it was the conclusion of the subcommittee that the results which could normally be expected to come from a proper and thorough exercise of the clemency power in the Office of the Secretary of War had not

been obtained. This resulted in widespread criticism of the Army system and prompted the subcommittee to give the Judge Advocate General this clemency power, to the exclusion of the Secretary of War. When the matter was presented to the full committee, the Secretary of War appeared in opposition to the committee amendment and urged that the final power of clemency be restored to his office. After due deliberation, the full committee restored the power to the Secretary of War. It is a recognized fact that administrative failures of this nature are usually the result of the stress of wartime. The increased responsibility of every higher official makes it inevitable that certain duties be delegated to subordinates, and unless those subordinates have the capabilities to meet the delegated responsibilities, the desired results will not be obtained. In restoring final clemency power to the Office of the Secretary of War, it is to be hoped that the appropriate officials will take such steps as they may deem necessary to insure that any future delegation of the power of clemency will be safeguarded by selecting the best qualified delegates of the power obtainable.

6. Should "command influence" with respect to the judicial acts of courts martial, military commissions and the members thereof, be curtailed?

There is unanimous agreement that "command influence" has been improper and must be stopped. In addition to its provisions in sections 33 of the bill, the War Department has accepted section 10½ of the Durham bill as an amendment. We consider these provisions adequate to stop this phase of "command influence."

With the very few exceptions which have been mentioned there is complete agreement between our committee and the War Department on every section of the bill, as amended, through section 45. This brings us to the final and by far the most important question which our committee has considered:

Should an independent Judge Advocate General's Corps, with a separate promotion list, be established?

The War Department opposes the establishment of a separate Judge Advocate General's Corps, however, our committee, favors such a corps. It is important to note that every organizational representative and every individual who testified before the committee, except War Department witnesses, not only favored but urged the establishment of a separate Judge Advocate General's Corps with a separate promotion list.

Under present law "command" has an abnormal and unjustified influence over military justice. In opposing our decision the War Department stresses the necessity for preserving proper discipline and for giving line commanders authority which is commensurate with their responsibility. We fully agree that discipline is of the utmost importance and must be preserved, however, we feel equally certain that in the administration of military justice there is a point beyond which the considerations of justice are paramount to discipline. Under present law and under this bill, as amended, "command" has abundant authority to enforce discipline. It refers the charges for trial, convenes the court, appoints the trial judge advocate, law member, and defense counsel who must now be qualified personnel of the Judge Advocate General's Department and, after the trial reviews the case with full authority to approve or disapprove the whole or any part of the sentence.



We contend that "command" should ask for nothing more in the furtherance of discipline. At the conclusion of a trial, under the present system, the same officers who conducted the case return to the command of a line officer who has full authority over their efficiency ratings, promotion recommendations, leaves, and duty assignments. These officers, many of whom have families and have chosen the Army for a career, would be less than human if they ignored the possibilities of such influence. We contend that those who are charged with the impartial administration of military justice must have sufficient freedom of judicial determination to meet the responsibility.

During the course of the lengthy hearings by the Legal Subcommittee, it became apparent that it was the majority desire to establish a separate Judge Advocate General's Corps with a separate promotion list. The Under Secretary of War, Hon. Kenneth C. Royall, and Lt. Gen. J. Lawton Collins requested the opportunity to be heard in opposition to such a provision. Both of these witnesses appeared before the subcommittee and ably presented the views of "command" officers in opposition to a Judge Advocate General's Corps. In spite of this testimony by these able and respected witnesses, the subcommittee was still of the opinion that a separate corps should be established. When the matter was brought before the full committee for final action, the Secretary of War, Hon. Robert P. Patterson, and the Chief of Staff, Hon. Dwight Eisenhower, requested that they be permitted to appear before the full committee in opposition to a separate Judge Advocate General's Corps. Even though the request was unusual and was at variance with the established procedure of the committee in its consideration of subcommittee reports, the request was granted and both the Secretary of War and the Chief of Staff appeared before the committee and voiced their strenuous objections to the curtailment of the clemency power in the Office of the Secretary of War, and the establishment of a separate Judge Advocate General's Corps. As hereinbefore stated, the clemency power was restored to the Secretary of War; however, the full committee endorsed the action of the subcommittee in voting to establish a Judge Advocate General's Corps with a separate promotion list.

The use of the term "independent Judge Advocate General's Corps" has been rather loose and has resulted in some unfortunate and unjustified conclusions. The primary mission of every member of the armed forces of the United States is the winning of battles in wartime and the preparation to win them in peacetime. Regardless of their technical status in the armed forces, members of the Judge Advocate General's Department or Corps have that same primary mission and we do not intend that it shall be changed. Judge Advocate officers are properly members of the War Department team and while the duties of their assignments are necessarily noncombatant in nature, it seems wholly unjustified to say, as has been done, that they are less interested in the primary mission of the Army than any other member of the armed forces.

It has been said that this is another attempt to establish special privileges for another professional group. Nothing could be further from the truth. During the entire hearings which began on April 18 and were not concluded until the latter part of June, no member of the subcommittee nor any witness who appeared before it gave the

slightest intimation that he was interested in legislating for lawyers as a class. As a matter of fact, there is a shortage of qualified legal talent in the Army, and it seems inevitable that if we are to attract qualified personnel into the Judge Advocate General's Department that we must do more than has been done heretofore. The Vanderbilt committee states that approximately 25,000 lawyers applied for duty with the Judge Advocate General's Department during the war and it remains a fact that a very small percentage of these lawyers were accepted. Many lawyers preferred not to serve in the Judge Advocate General's Department because of its unusual susceptibility to "command." The evidence was undisputed that many line commanders declined to use such legal talent as was available to them in matters of military justice and even went so far as to reprimand those lawyers who made an honest attempt to serve the cause of justice in military trials. Even if a separate Judge Advocate General's Corps is established, the Army will have great difficulty in obtaining qualified personnel to staff such a corps. The Army will find itself in somewhat the same position as it now finds itself with respect to doctors. They are in great demand in civilian life, and it is certain that the emoluments of civil practice exceed those offered by the Army. Some inducement must be offered to retain the qualified officers now on duty and to attract qualified graduates of our law schools into the service. The present condition does neither.

The Secretary and the Chief of Staff have criticized a separate promotion list for the Judge Advocate General's Corps, stating that it is contrary to the basic provisions of H. R. 3830, the promotion bill, which was recently passed by the Armed Services Committee and the House. It is admitted that there are humps in certain grades in the Judge Advocate General's Department, however, any objective study of this matter will reveal that the same situation exists in other branches of the service, particularly the Air Corps. It is important to note that it is not mandatory that the Secretary of War fill all grades under the promotion bill. He may do so at his discretion, and it is inconceivable that he would take any action in this respect which was not uniform throughout the other branches of the service.

It seems apparent that "command" considers the Judge Advocate General's Department to be composed of a nonprofessional group, whereas we are of the opinion that the Judge Advocate's Department must be a professional group, specially trained in order that it may properly perform its function. We have been reliably informed that approximately 90 percent of the field work of the Judge Advocate's Department consists of matters relating directly to military justice and that more than 50 percent of its work in Washington is of the same nature. Another considerable function consists of the investigation and adjustment of claims. It can hardly be expected that unqualified personnel can handle these assignments. If they could, this subject would not be before us today.

The Secretary states that the creation of a separate corps of the Judge Advocate's will not decrease the load on combat officers. We think that the creation of a separate corps would inevitably result in lessening the burden on combat officers. It is an indisputable fact that throughout the war the trial judge advocates, law members, and defense counsel, in addition to officers who investigated claims, were largely drawn from officers of the line. This resulted in those officers



having a dual function and the testimony before our committee made it very apparent that the added function of military justice and claims was held to be of secondary importance.

It is difficult to determine the costs which would be incurred by the enactment of this legislation. The War Department has estimated that the enactment of H. R. 2575 would require a total of 937 officers and a comparable number of enlisted men, at a cost of \$3,200,000. Since the War Department endorses this bill, it is assumed that, if enacted, adequate qualified personnel will be provided as rapidly as they become available. Our amendment proposes a corps of 750 officers, and warrant officers and enlisted men in such numbers as the Secretary of War may determine. In any event we are of the opinion that the establishment of a separate Judge Advocate General's Corps would cost no more than the enactment of the original provisions of H. R. 2575.

We are now on the threshold either of universal military training or of the maintenance of a professional army at least five times larger than that maintained before the last war. The future Army, no matter how it may be raised, will be composed of the physically fit youth of the country. The first contact with any judicial system for the overwhelming majority of these young men will be their experience with the administration of military justice. We believe that it is our duty, so far as lies within our power, to see that the system to which they are exposed is reasonably designed to achieve justice. The system now in effect cannot guarantee the desired result.

Except for the committee amendment relative to the establishment of a Judge Advocate General's Corps with a separate promotion list, the War Department favors the enactment of this legislation as is evidenced by the letter from the Secretary of War which is hereto attached and made a part of this report. The Armed Services Committee favors the enactment of the proposed legislation, as amended.

WAR DEPARTMENT,  
Washington, D. C., March 12, 1947.

The SPEAKER,  
House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith draft of a bill to amend the Articles of War to improve the administration of military justice, to provide for more effective appellate review, to insure the equalization of sentences, and for other purposes which the War Department recommends be enacted into law.

The purpose of the proposed legislation is to amend the Articles of War (41 Stat. 787, et seq.), as amended, to provide a series of changes for the improvement of the administration of military justice based upon the report on the judicial system of the Army by the Committee on Military Affairs of the House of Representatives (H. Rept. No. 2722, 79th Cong., 2d sess.), and the report of the Advisory Committee on Military Justice, appointed by the Secretary of War, dated December 13, 1946, of which a copy is enclosed.

The effect of the proposed legislation upon existing Articles of War is summarized as follows:

Section 1 amends article 1 to modernize nomenclature and to include certain air force and other units.

Section 2 amends subparagraph (a) of article 2 to cover warrant officers and flight officers and to delete field clerks.

Section 3 amends article 4 to authorize appointment of enlisted personnel on general and special courts martial. It also changes the article to incorporate present provisions of articles 8 and 9 making an accuser or witness for the prosecution ineligible as members.

Sections 4 and 5 amend articles 5 and 6 to clarify authority for enlisted personnel to sit as members of courts.

Section 6 amends article 8 to authorize appointment of general courts martial in certain additional categories. In addition to units specifically mentioned the changes authorize appointment of general courts martial by the commanding officer of any command to which a member of the Judge Advocate General's Department is regularly assigned as staff judge advocate. The changes also relate to the qualifications of law members and the necessity for their presence at trials.

Section 7 amends article 9 to include additional units the commanding officers of which are authorized to appoint special courts martial.

Section 8 amends article 11 with respect to the appointment and services of defense counsel.

Section 9 amends article 12 specifically to authorize general courts martial to adjudge bad-conduct discharges.

Section 10 amends article 13 to authorize special courts martial to adjudge bad-conduct discharges.

Section 11 amends article 14 to omit obsolete classifications of persons subject to trial by summary courts martial.

Section 12 amends article 16 to make it applicable to enlisted personnel serving as members of courts and to provide that enlisted persons shall not sit as members of courts martial if assigned to the same company as accused.

Section 13 amends article 22 to clarify the right of the defense to secure the attendance of witnesses in behalf of accused.

Section 14 amends article 24 to add a prohibition against coercion in obtaining confessions and other damaging statements.

Section 15 amends article 25 to authorize the use of depositions in capital cases where a sentence of death is not to be adjudged and to authorize the taking of depositions after charges have been preferred but prior to reference for trial.

Section 16 amends article 31 to define the powers of law members.

Section 17 amends article 36 to define the method of forwarding records of trial by special courts martial involving sentences including bad-conduct discharges.

Section 18 amends article 38 to require the submission of rules and regulations (Manual for Courts Martial) to the Congress only once, instead of annually.

Section 19 amends article 39 to remove the bar of the statute of limitations for absence without leave in time of war and to authorize the Secretary of War to extend the statute of limitations, in time of war, where prosecution of the case would be contrary to the public interest.

Section 20 amends article 43 to clarify the votes required with respect to all findings and sentences by courts martial.

Section 21 amends article 44 by deleting the old punitive provision covering publication of convictions for cowardice or fraud and by substituting authorization for courts martial to adjudge reduction to the grade of private in officers' cases.

Section 22 amends article 46 by removing the present contents of that article to article 47 and substituting the present requirements of article 70 with respect to signatures, oaths, and investigation of charges and delays in forwarding charges.

Section 23 amends article 47 to add clauses covering the assignment of members of the Judge Advocate General's Department and references to staff judge advocates prior to and after trial. A clause is also added covering action upon sentences now included in article 46.

Section 24 amends article 48 to place the confirming power in The Judge Advocate General and a Judicial Council in his office with respect to sentences to dismissal of officers below general officer grade, dismissal or suspension of a cadet, or sentences involving imprisonment for life and providing for confirming action in certain other cases referred to the Judicial Council for confirming action.

Section 25 amends article 49 to define more explicitly the powers incident to the power to confirm.

Section 26 amends article 50 by removing the present contents to article 51 and by substituting therefor the contents of present article 50½ relating to appellate review. The new article provides for constitution of the Judicial Council, prescribes methods of procedure by the Board of Review and defines action to be taken upon cases examined. It authorizes the weighing of evidence on appellate review. It amends the present provisions of article 50½ to make explicit the finality of sentences of court martial.

Section 27 rescinds article 50½ as a numbered article.

Section 28 amends article 51 to include the contents of articles 51, 52, and 53 with respect to the mitigation, remission and suspension of sentences. It gives the Judge Advocate General authority to mitigate and remit, under the direction of the Secretary of War. The system of confirmation provided in the amended



articles eliminates the necessity for the provision of article 51 authorizing suspensions of sentences to dismissal "until the pleasure of the President be known."

Section 29 amends article 52 by removing the substance of the present article to article 51 and substituting the substance of the clauses of present article 50½ relating to rehearings ordered at the time of final action on sentences.

Section 30 amends article 53 by removing the substance of the present article to article 51 and substituting authorization for the Judge Advocate General to grant new trials within 1 year after final action is taken.

Section 31 amends article 70 by retaining the present punitive provisions with respect to delays and removing the administrative provisions relating to the preferring of charges and investigation thereof to article 46.

Section 32 amends article 85 to remove the mandatory punishment of dismissal of an officer for being drunk on duty in time of war.

Section 33 amends article 88 by rescinding the present punitive provisions concerning abuse of or wrongful interference with persons bringing provisions and other supplies into camp and substitutes punitive provisions in respect to coercion or unlawful influence in court-martial cases.

Section 34 amends article 89 by substituting the word "wrongfully" for "willfully" and eliminating the clause "(unless by order of his commanding officer)" with respect to the destruction of property.

Section 35 amends article 92 to make punishment for murder without premeditation discretionary and to make the punishment for rape death or such other punishment as a court martial may direct.

Section 36 amends article 93 to authorize regulations to merge the offenses of larceny and embezzlement.

Section 37 amends article 94 to delete the particularized description of various frauds against the United States and to substitute language assimilating similar provisions of the Criminal Code of the United States. The article is also amended to enlarge the categories of persons who may be tried after discharge for embezzlements or frauds.

Section 38 amends article 104 to authorize disciplinary punishment by forfeiture of pay of warrant officers, flight officers, and officers below the grade of brigadier general.

Section 39 amends article 108 to recognize discharge by sentence of special court martial (bad-conduct discharge).

Section 40 amends article 110 by adding to the articles to be read and explained to soldiers articles 24, 28, 97, and 121. It also requires that a text of the Articles of War and the Manual for Courts Martial shall be made available to soldiers upon request for personal examination.

Section 41 amends article 116 defining the powers of assistant trial judge advocates and assistant defense counsel by including within its scope the personnel of special courts martial.

Section 42 amends article 117 to delete a specific and awkward reference to the act of March 3, 1911, and to substitute therefor a general reference to the law on the subject.

Section 43 amends the first section of article 121 to permit the submission of complaints of wrongs to officers exercising general court martial jurisdiction over an officer against whom the complaint is made.

Although it is impossible to estimate accurately the cost of putting the proposed legislation into effect and maintaining the judicial system established thereby, it is believed that any increase in the cost of administering military justice in the Army occasioned by the proposed legislation will be comparatively negligible.

The Bureau of the Budget has informed this Department that the comments of the Department of Justice and the Navy Department with respect to the proposed legislation have been requested, and that, while there would be no objection to the immediate presentation of the draft of bill for the consideration of the Congress, this advice should not be construed as involving any commitment at the present time as to the relation of the various provisions of the bill to the program of the President. When further advice is received from the Bureau of the Budget, it will be submitted promptly to the Congress.

Respectfully,

ROBERT P. PATTERSON,  
Secretary of War.

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law in which no change is made is in

roman, new language is in italics, and that part which is omitted by black brackets).

ARTICLES OF WAR (41 STAT. 787 TO 811, AS AMENDED)

ARTICLE 1. DEFINITIONS.—The following words when used in these articles shall be construed in the sense indicated in this article, unless the context shows that a different sense is intended, namely:

- (a) The word "officer" shall be construed to refer to a commissioned officer.
- (b) The word "soldier" shall be construed as including a noncommissioned officer, a private, or any other enlisted man or woman;
- (c) The word "company" shall be understood as including a troop, [or] battery [;], [and] or corresponding unit of the Ground or Air Forces.
- (d) The word "battalion" shall be [understood] construed as including a squadron or corresponding unit of the Ground or Air Forces.
- (e) The word "cadet" shall be construed to refer to a cadet of the United States Military Academy.

ART. 2. (a) All officers, warrant officers, [Army field clerks, field clerks Quartermaster Corps,] and soldiers belonging to the Regular Army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same.

ART. 4. WHO MAY SERVE ON COURTS-MARTIAL.—All officers in the military service of the United States, and officers of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on courts-martial for the trial of any persons who may lawfully be brought before such courts for trial.

*All warrant officers in the active military service of the United States and warrant officers in the active military service of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on general and special courts-martial for the trial of warrant officers and enlisted persons, and persons in the category shall be detailed for such service when deemed proper by the appointing authority.*

*Enlisted persons in the active military service of the United States or in the active military service of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on general and special courts martial for the trial of enlisted persons when requested in writing by the accused at any time prior to the convening of the court. When so requested, no enlisted person shall without his consent, be tried by a court the membership of which does not include enlisted persons to the number of at least one-third of the total membership of the court.*

When appointing courts martial the appointing authority shall detail as members thereof those officers of the command and when eligible those enlisted persons of the command who, in his opinion, are best qualified for the duty by reason of age, training, experience, and judicial temperament; and officers and enlisted persons having less than two years' service shall not, if it can be avoided without manifest injury to the service, be appointed as members of courts martial in excess of the minority membership thereof. *No person shall be eligible to sit as a member of a general or special court martial when he is the accuser or a witness for the prosecution.*

ART. 5. GENERAL COURTS-MARTIAL.—General courts-martial may consist of any number of [officers] members not less than five.

ART. 6. SPECIAL COURTS-MARTIAL.—Special courts-martial may consist of any number of [officers] members not less than three.

ART. 8. GENERAL COURTS-MARTIAL.—The President of the United States, the commanding officer of a territorial [division or] department, the Superintendent of the Military Academy, the commanding officer of an Army group, an Army corps, a division, [or] a separate brigade, or corresponding unit of the Ground or Air Forces, or any command to which a member of the Judge Advocate General's Department is assigned as staff judge advocate, as prescribed in article 47, and, when empowered by the President, the commanding officer of any district or of any force or body of troops may appoint general courts-martial; but when such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority, [and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution,] and may in any case be appointed by superior authority when by the latter deemed desirable.



The authority appointing a general court-martial shall detail as one of the members thereof a law member who shall be an officer of the Judge Advocate General's Department, [except that when an officer of that department is not available for the purpose, the appointing authority shall detail instead an officer of some other branch of the service selected by the appointing authority as specially qualified to perform the duties of law member.] *or a member of the bar by a Federal court or of the highest court of a State of the United States and certified by the Judge Advocate General to be qualified for such detail: Provided, That no general court martial shall receive evidence or vote upon its findings or sentence in the absence of the law member regularly detailed.* The law member, in addition to his duties as a member, shall perform the duties prescribed in article 31 hereof and such other duties as the President may by regulations prescribe.

ART. 9. SPECIAL COURTS-MARTIAL.—The commanding officer of a district, garrison, fort, camp, station, or other place where troops are on duty, and the commanding officer of [a] *an army group, an army, an army corps, a division, brigade, regiment, detached battalion or [other detached command may appoint special courts-martial:] corresponding unit of Ground or Air Force, and the commanding officer of any other detached command or group of detached units placed under a single commander for this purpose may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed desirable. [;* and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution.]

ART. 11. APPOINTMENT OF TRIAL JUDGE ADVOCATES AND COUNSEL.—For each general or special court-martial the authority appointing the court shall appoint a trial judge advocate and a defense counsel, [and for each general court-martial one or more assistant trial judge advocates and one or more assistant defense counsel when necessary:] *and one or more assistant trial judge advocates and one or more assistant defense counsel when necessary: Provided, That the trial judge advocate and defense counsel of each general court-martial shall, if available, be members of the Judge Advocate General's Department or officers who are members of the bar of a Federal court or of the highest court of a State of the United States: Provided further, That in all cases in which the officer appointed as trial judge advocate shall be a member of the Judge Advocate General's Department, or an officer who is a member of the bar of a Federal court or of the highest court of a State, the officer appointed as defense counsel shall likewise be a member of the Judge Advocate General's Department or an officer who is a member of the bar of a Federal court or of the highest court of a State of the United States; Provided further, That when the accused is represented by counsel of his own selection and does not desire the presence of the regularly appointed defense counsel or assistant defense counsel, the latter may be executed the president of the court: And provided further, That no person who has acted as a member, trial judge advocate, assistant trial judge advocate, defense counsel, assistant defense counsel or investigating officer in any case shall subsequently act in any capacity as a member of the prosecution or defense or act as a staff judge advocate to the reviewing or confirming authority upon the same case.*

ART. 12. GENERAL COURTS-MARTIAL.—General courts-martial shall have power to try any person subject to military law for any crime or offense made punishable by these articles, and any other person who by the law of war is subject to trial by military tribunals: *Provided, [That no officer shall be brought to trial before a general court-martial appointed by the Superintendent of the Military Academy: Provided further, That the officer competent to appoint a general court-martial for the trial of any particular case may, when in his judgment the interest of the service shall so require, cause any case to be tried by a special court-martial notwithstanding the limitations upon the jurisdiction of the special court-martial as to offenses set out in article 13; but the limitations upon jurisdiction as to persons and upon punishing power set out in said article shall be observed.] That general courts-martial shall have power to adjudge any punishment authorized by law or the custom of the service including a bad-conduct discharge.*

ART. 13. SPECIAL COURTS-MARTIAL.—Special courts-martial shall have power to try any person subject to military law for any crime or offense not capital made punishable by these articles: *[Provided, That the President may, by regulations, except from the jurisdiction of special courts-martial any class or classes of persons subject to military law.] Provided, That the officer competent to appoint a general court-martial for the trial of any particular case may, when in his judgment the interest of the service so requires, cause any case to be tried by a special court-martial notwithstanding the limitations upon the jurisdiction of the special court-martial as*

to offenses herein prescribed[, but the limitations upon jurisdiction as to persons and upon punishing power herein prescribed shall be observed].

Special courts-martial shall not have the power to adjudge dishonorable discharge or dismissal, or to adjudge forfeiture of more than two-thirds pay per month for the period of not exceeding six months [.] : *Provided, That subject to approval of the sentence by an officer exercising general court-martial jurisdiction subject to appellate review by the Judge Advocate General and appellate agencies in his office, a special court-martial may adjudge a bad-conduct discharge in addition to other authorized punishment: Provided further, that a bad-conduct discharge shall not be adjudged by a special court-martial unless a complete record of the proceedings of and record taken by the court is taken in the case.*

ART. 14. SUMMARY COURTS-MARTIAL.—Summary courts-martial shall have power to try any person subject to military law, except an officer, [a member of the Army Nurse Corps,] a warrant officer, [an Army field clerk, a field clerk Quartermaster Corps,] or a cadet, [or a soldier holding the privileges of a certificate of eligibility to promotion,] for any crime or offense not capital made punishable by these articles: *Provided, That noncommissioned officers shall not, if they object thereto, be brought to trial before a summary court-martial without the authority of the officer competent to bring them to trial before a [general court-martial] special court-martial [.] : [Provided further, That the President, may by regulations, except from the jurisdiction of summary courts-martial any class or classes of persons subject to military law.]*

Summary courts-martial shall not have the power to adjudge confinement in excess of one month, restriction to limits for more than three months, or forfeiture or detention of more than two-thirds of one month's pay.

ART. 16. [OFFICERS;] PERSONS IN THE MILITARY SERVICE: HOW TRIABLE.—Officers shall be triable only by general and special courts-martial [.] and in no case shall [an officer] a person in the military service, when it can be avoided, be tried by [officers] persons inferior to him in rank. *No enlisted person may sit as a member of a court-martial for the trial of another enlisted person who is assigned to the same company or corresponding military unit.*

ART. 22. PROCESS TO OBTAIN WITNESSES.—Every trial judge advocate of a general or special court-martial and every summary court-martial shall have power to issue the like process to compel witnesses to appear and testify which courts of the United States [.] having criminal jurisdiction [.] may lawfully issue; but such process shall run to any part of the United States, its Territories, and possessions. *Witnesses for the defense shall be subpoenaed, upon request by the defense counsel, through process issued by the trial judge advocate, in the same manner as witnesses for the prosecution.*

ART. 24. COMPULSORY SELF-INCRIMINATION PROHIBITED.—No witness before a military court, commission, court of inquiry, or board, or before any officer conducting an investigation, or before any officer, military or civil, designated to take a deposition to be read in evidence before a military court, commission, court of inquiry, or board, or before an officer conducting an investigation, shall be compelled to incriminate himself or to answer any question the answer to which may tend to incriminate him, or to answer any question not material to the issue when such answer might tend to degrade him.

*The use of coercion or unlawful influence in any manner whatsoever by any person subject to military law to obtain any degrading statement not material to the issue, or any self-incriminating statement, admission or confession from any accused person or witness, shall be deemed to be conduct to the prejudice of good order and military discipline, and no such statement, admission, or confession shall be received in evidence by any court martial.*

ART. 25. DEPOSITIONS—WHEN ADMISSIBLE.—A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or a military board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory, or District in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing, or when it appears to the satisfaction of the court, commission, board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to, or, in foreign places, because of nonamenability to process, refuse to, appear and testify in person at the place of trial or hearing: *Provided, That testimony by deposition may be adduced for the defense in capital cases: Provided further, That a deposition may be read in evidence in any case in which the death penalty is authorized by law but is not mandatory, whenever the appointing authority shall have directed that the case be treated as not capital, and in*



such a case a sentence of death may not be adjudged by the court martial: And provided further, That at any time after charges have been signed as provided in article 46, and before the charges have been referred for trial, any authority competent to appoint a court martial for the trial of such charges may designate officers to represent the prosecution and the defense and may authorize such officers, upon due notice, to take the deposition of any witness, and such deposition may subsequently be received in evidence as in other cases.

ART. 31. METHOD OF VOTING.—Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who [will] shall forthwith announce the result of the ballot to the members of the court. The law member of [the court, if any, or if there be no law member of the court, then the president, may] a general court-martial or the president of a special court-martial, shall rule in open court upon interlocutory questions, other than challenge, arising during the proceedings: *Provided*, That unless such ruling be made by the law member of [the court] a general court-martial, if any member objects thereto, the court shall be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank: *And provided further*, That [if] any such ruling be made by the law member of [the court] a general court-martial upon any interlocutory question other than [an objection to the admissibility of evidence offered during the trial, and any member objects to the ruling, the court shall likewise be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank: *Provided further, however*, That the phrase, "objection to the admissibility of evidence offered during the trial," as used in the next preceding proviso hereof, shall not be construed to include questions as to the order of the introduction of witnesses or other evidence, nor of the recall of witnesses for further examination, nor as to whether expert witnesses shall be admitted or called upon any question, nor as to whether the court shall view the premises where an offense is alleged to have been committed, nor as to the competency of witnesses, as, for instance, of children, witnesses alleged to be mentally incompetent, and the like, nor as to the insanity of accused, or whether the existence of mental disease or mental derangement on the part of the accused has become an issue in the trial, or accused required to submit to physical examination, nor whether any argument or statement of counsel for the accused or of the trial judge advocate is improper, nor any ruling in a case involving military strategy or tactics or correct military action; but, upon all these questions arising on the trial, if any member object to any ruling of the law member, the court shall be cleared and closed and the question decided by majority vote of the members in the manner aforesaid.] a motion for a finding of not guilty, or the question of accused's insanity, shall be final and shall constitute the ruling of the court; but the law member may in any case consult with the court, in closed session, before making a ruling, and may change any ruling made at any time during the trial

ART 36. DEPOSITION OF RECORDS.—SPECIAL AND SUMMARY COURTS-MARTIAL.—After having been acted upon by the officer appointing the court, or by the officer commanding for the time being, the record of each trial by special court-martial or a report of each trial by summary court-martial shall be transmitted to [such general headquarters as the President may designate in regulations, and to be filed in the office of the judge advocate. When no longer of use, records of summary courts-martial may be destroyed.] the headquarters of the officer exercising general court-martial jurisdiction over the command, there to be filed in the office of the staff judge advocate: *Provided, however*, That each record of trial by special court martial in which the sentence, as approved by the appointing authority, includes a bad-conduct discharge, which, if approved by the officer exercising general court-martial jurisdiction under the provisions of article 47, be forwarded by him to the Judge Advocate General for review as hereinafter in these articles provided. When no longer of use, records of summary courts-martial may be destroyed as provided by law governing destruction of government records.

ART. 38. PRESIDENT MAY PRESCRIBE RULES.—The President may, by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals, which regulations shall, insofar as he shall deem practicable, apply the principles of law and rules of evidence general recognized in the trial of criminal cases in the district courts of the United States: *Provided*, That nothing contrary to inconsistent with these articles shall be so prescribed: *Provided further*, That all rules and regulations made in pursuance of this article shall be laid before the Congress [annually].

ART. 39. AS TO TIME.—Except for desertion or absence without leave committed in time of war, or for mutiny or murder, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense committed more than two years before the arraignment of such person: *Provided*, That for desertion in time of peace or for any crime or offense punishable under articles 93 and 94 of this code the period of limitations upon trial and punishment by court martial shall be three years: *Provided further*, That the period of any absence of the accused from the jurisdiction of the United States, and also any period during which by reason of some manifest impediment the accused shall not have been amenable to military justice, shall be excluded in computing the aforesaid periods of limitation: [And] *Provided further*, That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law.]: *And provided further*, That in the case of any offense the trial of which in time of war shall be certified by the Secretary of War to be detrimental to the prosecution of the war or inimical to the Nation's security, the period of limitations herein provided for the trial of the said offense shall be extended to the duration of the war and six months thereafter.

ART. 43. DEATH SENTENCE.—WHEN LAWFUL; VOTE ON FINDINGS AND SENTENCE.—No person shall, by general court-martial, be convicted of an offense for which the death penalty is made mandatory by law, nor sentenced to suffer death, ~~except by the concurrence of all the members of said court-martial present at the time the vote is taken~~, and for an offense in these articles expressly made punishable by death; nor sentenced to life imprisonment, nor to confinement for more than ten years, except by the concurrence of three-fourths of all of the members present at the time the vote is taken. [All other convictions and sentences, whether by general or special court-martial, may be determined by a two-thirds vote of those members present at the time the vote is taken.] *Conviction of any offense for which the death sentence is not mandatory and any sentence to confinement not in excess of ten years, whether by general or special court martial, may be determined by a two-thirds vote of those members present at the time the vote is taken.* All other questions shall be determined by a majority vote.

ART. 44. [COWARDICE; FRAUD—ACCESSORY PENALTY.—When an officer is dismissed from the service for cowardice or fraud, the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp and in the State from which the offender came or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.]

OFFICERS—REDUCTION TO RANKS.—When a sentence of dismissal may lawfully be adjudged in the case of an officer, the sentence may in time of war, under such regulation as the President may prescribe, adjudge in lieu thereof reduction to the grade of private.

ART. 46. [ACTION BY CONVENING AUTHORITY.—Under such regulations as may be prescribed by the President every record of trial by general court-martial or military commission received by a reviewing or confirming authority shall be referred by him before he acts thereon, to his staff judge advocate or to the Judge Advocate General. No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer appointing the court or by the officer commanding for the time being.]

#### CHARGES; ACTION UPON.—

(a) SIGNATURE; OATH.—Charges and specifications must be signed by a person subject to military law and under oath either that he has personal knowledge of, or has investigated, the matters set forth therein and that the same are true in fact, to the best of his knowledge and belief.

(b) INVESTIGATION.—No charge will be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made. This investigation will include inquiries as to the truth of the matter set forth in said charges, form of charges, and what disposition of the case shall be made in the interest of justice and discipline. The accused shall be permitted, upon his request, to be represented at such investigation by counsel of his own selection, civil counsel if he so provides, or military if such counsel be reasonably available, otherwise by counsel appointed by the officer exercising general court-martial jurisdiction over the command. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation they shall be accompanied by a statement of the substance of the testimony taken on both sides.

*forwarded with copy.*



(c) **FORWARDING CHARGES; DELAYS; SERVICE OF CHARGES.**—When a person is held for trial by general court-martial, the commanding officer will, within eight days after the accused is arrested or confined, if practicable, forward the charges to the officer exercising general court-martial jurisdiction and furnish the accused a copy of such charges. If the same be not practicable, he will report to the superior authority the reasons for delay. The trial judge advocate will cause to be served upon the accused a copy of the charges upon which trial is to be had, and a failure so to serve such charges will be ground for a continuance unless the trial be had on the charges furnished the accused as hereinbefore provided. In time of peace no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of charges upon him.

**ART. 47. [POWERS INCIDENT TO POWER TO APPROVE.] ACTION BY CONVENING AUTHORITY.**—

(a) **ASSIGNMENT OF JUDGE ADVOCATES; CHANNELS OF COMMUNICATION.**—All members of the Judge Advocate General's Department will be signed as prescribed by the Judge Advocate General after appropriate consultations with commanders on whose staff they may serve; and the Judge Advocate General or senior members of his staff will make frequent inspections in the field in supervision of the administration of military justice. Convening authorities will at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice; and the staff judge advocate of any command is authorized to communicate directly with the staff judge advocate of a superior or subordinate command, or with the Judge Advocate General.

(b) **REFERENCE FOR TRIAL.**—Before directing the trial of any charge by general court martial the convening authority will refer it to his staff judge advocate for consideration and advice; and no charge will be referred to a general court martial for trial unless it has been found that a thorough and impartial investigation thereof has been made as prescribed in the preceding article, that such is legally sufficient to allege an offense under these articles, and is sustained by evidence indicated in the report of investigation.

(c) **ACTION ON RECORD OF TRIAL.**—Before acting upon a record of trial by general court martial or military commission, or a record of trial by special court martial in which a bad-conduct discharge has been adjudged and approved by the authority appointing the court, the reviewing authority will refer it to his staff judge advocate or to the Judge Advocate General for review and advice, and no sentence shall be approved unless upon conviction established beyond reasonable doubt of an offense made punishable by these articles, and unless the record of trial has been found legally sufficient to support it.

(d) **APPROVAL.**—No sentence of a court martial shall be carried into execution until the same shall have been approved by the convening authority: Provided, That no sentence of a special court martial including a bad-conduct discharge shall be carried into execution until in addition to the approval of the convening authority the same shall have been approved by an officer authorized to appoint a general court martial.

(e) **WHO MAY EXERCISE.**—Action by the convening authority may be taken by an officer commanding for the time being, by a successor in command, or by any officer exercising general court-martial jurisdiction.

(f) **POWERS INCIDENT TO POWER TO APPROVE.**—The power to approve the sentence of a court-martial shall [be held to] include: [(a)] (1) The power to approve or disapprove a finding of guilty and to approve only so much of a finding of guilty of a particular offense as involves a finding of a guilty of a lesser included offense; [When, in the opinion of the authority having power to approve, the evidence of record requires a finding of only the lesser degree of guilt; and] [(b)] (2) The power to approve or disapprove the whole or any part of the sentence. [(c)] (3) The power to demand a case for rehearing, under the provisions of article [50½] 52.

**ART. 48. CONFIRMATION.**—[WHEN REQUIRED.]—In addition to the approval required by Article [46] 47 confirmation [by the President is required in the following cases] is required as follows before the sentence of a court-martial is carried into execution, namely:

[(a)] Any sentence respecting a general officer;

a. By the President with respect to any sentence

(1) of death, or

(2) involving a general officer:

Provided, That when the President has already acted as approving authority, no additional confirmation by him is necessary.

[(b)] Any sentence extending to the dismissal of an officer, except that in time of war a sentence extending to the dismissal of an officer below the grade of

brigadier general, may be carried into execution upon confirmation by the commanding general of the Army in the field or by the commanding general of the territorial department or division;]

b. By the Secretary of War with respect to any sentence not requiring approval or confirmation by the President, when the Judge Advocate General does not concur in the action of the judicial council;

[(c) Any sentence extending to the suspension or dismissal of a cadet; and]

c. By the judicial council, with the concurrence of the Judge Advocate General, with respect to any sentence

(1) when the confirming action of the judicial council is not unanimous, or when by direction of the Judge Advocate General his participation in the confirming action is required, or

(2) involving imprisonment for life, or

(3) involving the dismissal of an officer other than a general officer, or

(4) involving the dismissal or suspension of a cadet;

[(d) Any sentence of death, except in the cases of persons convicted in time of war of murder, rape, mutiny, desertion, or as spies; and in such excepted cases a sentence of death may be carried into execution, subject to the provisions of article 50½, upon confirmation by the commanding general of the Army in the field or by the commanding general of the territorial department or division.]

d. By the judicial council with respect to any sentence in a case transmitted to the judicial council under the provisions of article 50 for confirming action.

[When the authority competent to confirm the sentence has already acted as the approving authority no additional confirmation by him is necessary.]

ART. 50. [MITIGATION OR REMISSION OF SENTENCES.—The power to order the execution of the sentence adjudged by a court-martial shall be held to include, inter alia, the power to mitigate or remit the whole or any part of the sentence.

[Any unexecuted portion of a sentence adjudged by a court-martial may be mitigated or remitted by the military authority competent to appoint, for the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the person under sentence is held, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority; but no sentence approved or confirmed by the President shall be remitted or mitigated by any other authority, and no approval sentence of loss of files by an officer shall be remitted or mitigated by any authority inferior to the President, except as provided in the fifty-second article.]

[When empowered by the President so to do, the commanding general of the Army in the field or the commanding general of the territorial department or division, may approve or confirm and commute (but not approve or confirm without commuting), mitigate, or remit and then order executed as commuted, mitigated, or remitted any sentence which under these articles requires the confirmation of the President before the same may be executed.]

[The power of remission or mitigation shall extend to all uncollected forfeitures adjudged by sentence of court martial.]

#### APPELLATE REVIEW.—

a. BOARD OF REVIEW; JUDICIAL COUNCIL.—The Judge Advocate General shall constitute, in his office, a board of review composed of not less than three officers of the Judge Advocate General's Department. He shall also constitute, in his office, a judicial council composed of three general officers of the Judge Advocate General's Department: Provided, That the Judge Advocate General may, under exigent circumstance, detail as members of the judicial council, for periods not in excess of 60 days, officers of the Judge Advocate General's Department of grades below that of general officer.

b. ADDITIONAL BOARDS OF REVIEW AND JUDICIAL COUNCILS.—Whenever necessary, the Judge Advocate General may constitute two or more boards of review and judicial councils in his office, with equal powers and duties, composed as provided in the first paragraph of this article.

c. BRANCH OFFICES.—Whenever the President deems such action necessary, he may direct the Judge Advocate General to establish a branch office, under an Assistant Judge Advocate General who shall be a general officer of the Judge Advocate General's Department, with any distant command, and to establish in such branch office one or more boards of review and judicial councils composed as provided in the first paragraph of this article. Such Assistant Judge Advocate General and such board of review and judicial council shall be empowered to perform for that command under the general supervision of the Judge Advocate General, the duties which the Judge Advocate General and the board of review and judicial council in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval or con-

Why not  
encompass  
in office  
of Judge  
Advocate?

If we put civilians here, the necessity for judges  
no. of genl officers in JAG will be avoided



firmation by the President: Provided, That the power of mitigation and remission shall not be exercised by such Assistant Judge Advocate General or by agencies in his office, but any case in which such action is deemed desirable shall be forwarded to the Judge Advocate General with appropriate recommendations.

d. ACTION BY BOARD OF REVIEW WHEN APPROVAL BY PRESIDENT OR CONFIRMING ACTION IS REQUIRED.—Before any record of trial in which there has been adjudged a sentence requiring approval or confirmation by the President or confirmation by any other confirming authority is submitted to the President or such other confirming authority, as the case may be, it shall be examined by the board of review which shall take action as follows:

(1) In any case requiring action by the President, the board of review shall submit its opinion in writing, through the judicial council which shall also submit its opinion in writing, to the Judge Advocate General, who shall, except as herein otherwise provided, transmit the record and the board's and council's opinions, with his recommendations, directly to the Secretary of War for the action of the President: Provided, That the judicial council, with the concurrence of the Judge Advocate General, shall have powers in respect to holdings of legal insufficiency equal to the powers vested in the board of review by subparagraph (3) of this paragraph.

(2) In any case requiring confirming action by the judicial council with or without the concurrence of the Judge Advocate General, when the board of review is of the opinion that the record of trial is legally sufficient to support the sentence it shall submit its opinion in writing to the judicial council for appropriate action.

(3) When the board of review is of the opinion that the record of trial in any case requiring confirming action by the President or confirming action by the judicial council is legally insufficient to support the findings of guilty and sentence, or the sentence, or that errors of law have been committed injuriously affecting the substantial rights of the accused, it shall submit its holding to the Judge Advocate General and when the Judge Advocate General concurs in such holding, such findings and sentence shall thereby be vacated in accord with such holding and the record shall be transmitted by the Judge Advocate General to the appropriate convening authority for a rehearing on such other action as may be proper.

e. ACTION BY BOARD OF REVIEW IN CASES INVOLVING DISHONORABLE OR BAD-CONDUCT DISCHARGES OR CONFINEMENT IN PENITENTIARY.—No authority shall order the execution of any sentence of a court-martial involving dishonorable discharge not suspended, bad-conduct discharge not suspended, or confinement in a penitentiary unless and until the appellate review required by this article shall have been completed and unless and until any confirming action required shall have been completed. Every record of trial by general or special court-martial involving a sentence to dishonorable discharge or bad-conduct discharge, whether such discharges be suspended or not suspended, and every record of trial by general court-martial involving a sentence to confinement in a penitentiary, other than records of trial examination of which is required by paragraph d of this article, shall be examined by the board of review which shall take action as follows:

(1) In any case in which the board of review holds the record of trial legally sufficient to support the findings of guilty and sentence, and confirming action is not by the Judge Advocate General or the board of review deemed necessary, the Judge Advocate General shall transmit the holding to the convening authority, and such holding shall be deemed final and conclusive.

(2) In any case in which the board of review holds the record of trial legally sufficient to support the findings of guilty and sentence, but modification of the findings of guilty or the sentence is by the Judge Advocate General or the board of review deemed necessary to the ends of justice, the holding and the record of trial shall be transmitted to the judicial council for confirming action.

(3) In any case in which the board of review holds the record of trial legally insufficient to support the findings of guilty and sentence, in whole or in part, the Judge Advocate General concurs in such holding, the findings and sentence shall thereby be vacated in whole or in part in accord with such holding, and the record shall be transmitted by the Judge Advocate General to the convening authority for rehearing or such other action as may be appropriate.

(4) In any case in which the board of review holds the record of trial legally insufficient to support the findings of guilty and sentence, in whole or in part, and the Judge Advocate General shall not concur in the holding of the board of review, the holding and the record of trial shall be transmitted to the judicial council for confirming action.

*f. APPELLATE ACTION IN OTHER CASES.*—Every record of trial by general court martial the appellate review of which is not otherwise provided for by this article shall be examined in the office of the Judge Advocate General and if found legally insufficient to support the findings of guilty and sentence, in whole or in part, shall be transmitted to the board of review for appropriate action in accord with paragraph *e* of this article.

*g. WEIGHING EVIDENCE.*—In the appellate review of records of trial by courts martial as provided in these articles the Judge Advocate General and all appellate agencies in his office shall have authority to weigh evidence, judge the credibility of witnesses, and determine controverted questions of fact.

*h. FINALITY OF COURT-MARTIAL JUDGMENTS.*—The appellate review of records of trial provide by this article, the confirming action taken pursuant to articles 48 or 49, the proceedings, findings, and sentences of courts martial as heretofore or hereafter approved, reviewed or confirmed as required by the Articles of War and all dismissals and discharges heretofore or hereafter carried into execution pursuant to sentences by courts martial following approval, review or confirmation as required by the Articles of War, shall be final and conclusive, and orders publishing the proceedings of courts martial and all action taken pursuant to such proceedings shall be binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon application for a new trial as provided in article 53.

[ART. 50½. REVIEW: REHEARING.—The Judge Advocate General shall constitute, in his office, a board of review consisting of not less than three officers of the Judge Advocate General's Department.

[Before any record of trial in which there has been adjudged a sentence requiring approval or confirmation by the President under the provisions of article 46, article 48, or article 51 is submitted to the President, such record shall be examined by the board of review. The board shall submit its opinion in writing, to the Judge Advocate General, who shall, except as herein otherwise provided, transmit the record and the board's opinion, with his recommendations, directly to the Secretary of War for the action of the President.

[Except as herein provided, no authority shall order the execution of any other sentence of a general court-martial, involving the penalty of death, dismissal not suspended, dishonorable discharge not suspended, or confinement in a penitentiary, unless and until the board of review shall, with the approval of the Judge Advocate General, have held the record of trial upon which such sentence is based legally sufficient to support the sentence; except that the proper reviewing or confirming authority may upon his approval of a sentence involving dishonorable discharge or confinement in a penitentiary order its execution if it is based solely upon findings of guilty of a charge or charges and a specification or specifications to which the accused has pleaded guilty. When the board of review, with the approval of the Judge Advocate General, holds the record in a case in which the order of execution has been withheld under the provisions of his paragraph legally sufficient to support the findings and sentence, the Judge Advocate General shall so advise the reviewing or confirming authority from whom the record was received, who may thereupon order the execution of the sentence. When in a case in which the order of execution has been withheld under the provisions of this paragraph, the board of review holds the record of trial legally insufficient to support the findings or sentence, either in whole or in part, or that errors of law have been committed injuriously affecting the substantial rights of the accused, and the Judge Advocate General concurs in such holding of the board of review, such findings and sentence shall be vacated in whole or in part in accord with such holding and the recommendations of the Judge Advocate General thereon, and the record shall be transmitted through the proper channels to the convening authority for a rehearing or such other action as may be proper. In the event that the Judge Advocate General shall not concur in the holding of the board of review, the Judge Advocate General shall forward all the papers in the case, including the opinion of the board of review and his own dissent therefrom, directly to the Secretary of War for the action of the President, who may confirm the action of the reviewing authority or confirming authority below, in whole or in part, with or without remission, mitigation, or commutation, or may disapprove, in whole or in part, any finding of guilty, and may disapprove or vacate the sentence, in whole or in part.

[When the President or any reviewing or confirming authority disapproves or vacates a sentence the execution of which has not theretofore been duly ordered, he may authorize or direct a rehearing. Such rehearing shall take place before a court composed of officers not members of the court which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court, and no sentence in excess of or more severe



than the original sentence shall be enforced unless the sentence be based upon a finding of guilty of an offense not considered upon the merits in the original proceeding: *Provided*, That such rehearing shall be had in all cases where a finding and sentence have been vacated by reason of the action of the board of review approved by the Judge Advocate General holding the record of trial legally insufficient to support the findings or sentence or that errors of law have been committed injuriously affecting the substantial rights of the accused, unless in accord with such action, and the recommendations of the Judge Advocate General thereon, the findings or sentence are approved in part only, or the record is returned for revision, or unless the case is dismissed by order of the reviewing or confirming authority. After any such rehearing had on the order of the President, the record of trial shall, after examination by the board of review, be transmitted by the Judge Advocate General, with the board's opinion and his recommendations, directly to the Secretary of War for the action of the President.

[Every record of trial by general court martial, examination of which by the board of review is not hereinbefore in this article provided for, such nevertheless be examined in the Judge Advocate General's office; and if found legally insufficient to support the findings and sentence, in whole or in part, shall be examined by the board of review, and the board, if it also finds that such record is legally insufficient to support the findings and sentence, in whole or in part, shall, in writing, submit its opinion to the Judge Advocate General, who shall transmit the record and the board's opinion, with his recommendation, directly to the Secretary of War for the action of the President. In any such case the President may approve, disapprove, or vacate, in whole or in part, any findings of guilty, or confirm, mitigate, commute, remit, or vacate any sentence, in whole or in part, and direct the execution of the sentence as confirmed or modified, and he may restore the accused to all rights affected by the findings, and sentence, or part thereof, held to be invalid; and the President's necessary orders to this end shall be binding upon all departments and officers of the Government.

[Whenever necessary, the Judge Advocate General may constitute two or more boards of review in his office, with equal powers and duties.

[Whenever the President deems such action necessary, he may direct the Judge Advocate General to establish a branch of his office, under an Assistant Judge Advocate General, with any distant command, and to establish in such branch office a board of review, or more than one. Such Assistant Judge Advocate General and such board or boards of review shall be empowered to perform for that command, under the general supervision of the Judge Advocate General, the duties which the Judge Advocate General and the board or boards of review in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval or confirmation by the President.]

[ART. 51. SUSPENSION OF SENTENCES OF DISMISSAL OR DEATH.—The authority competent to order the execution of a sentence of dismissal of an officer or a sentence of death may suspend such sentence until the pleasure of the President be known, and in case of such suspension a copy of the order of suspension, together with a copy of the record of trial, shall immediately be transmitted to the President.]

ART. 51. MITIGATION [OR] REMISSION AND SUSPENSION OF SENTENCES.—  
a. *AT THE TIME ORDERED EXECUTED.*—The Power of the President, the Secretary of War, and any reviewing authority to order the execution of [the] a sentence [adjudged by] of a court martial shall be held to include[, inter alia,] the power to mitigate [or], remit or suspend the whole or any part [of the sentence.] thereof, except that a death sentence may not be suspended. The Judge Advocate General shall have the power to mitigate, remit, or suspend the whole or any part of a sentence in any case requiring appellate review under article 50 and not requiring approval or confirmation by the President, but the power to mitigate or remit shall be exercised by the Judge Advocate General under the direction of the Secretary of War. The authority which suspends the execution of a sentence may restore the person under sentence to duty during such suspension; and the death or honorable discharge of a person under suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence.

b. *SUBSEQUENT TO THE TIME ORDERED EXECUTED.*—

(1) Any unexecuted portion of a sentence other than a sentence of death, including all uncollected forfeitures, adjudged by court-martial may be mitigated, remitted, or suspended and any other of suspension may be vacated, in whole or in part, by the military authority competent to appoint, for the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the person under sentence may be, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority or by the Judge

*Advocate General, under the direction of the Secretary of War: Provided, That no sentence approved or confirmed by the President shall be mitigated, remitted, or suspended by any authority inferior to the President: And provided further, That no order of suspension of a sentence to dishonorable discharge or bad conduct discharge shall be vacated unless and until confirming or appellate action on the sentence has been completed as required by articles 48 and 50.*

(2) *The power to suspend a sentence shall include the power to restore the person affected to duty during such suspension.*

(3) *The power to mitigate, remit, or suspend the sentence or any part thereof in the case of a person confined in the United States Disciplinary Barracks or in a penitentiary shall be exercised by the Secretary of War or by the Judge Advocate General under the direction of the Secretary of War.*

ART. 52. [SUSPENSION OF SENTENCES.—The authority competent to order the execution of the sentence of a court-martial may, at the time of the approval of such sentence, suspend the execution, in whole or in part, of any such sentence as does not extend to death, and may restore the person under sentence to duty during such suspension; and the Secretary of War or the commanding officer holding general court-martial jurisdiction over any such offender, may at any time thereafter, while the sentence is being served, suspend the execution, in whole or in part, of the balance of such sentence and restore the person under sentence to duty during such suspension. A sentence, or any part thereof, which has been so suspended may be remitted, in whole or in part, except in cases of persons confined in the United States Disciplinary Barracks or its branches, by the officer who suspended the same by his successor in office, or by any officer exercising appropriate court-martial jurisdiction over the command in which the person under sentence may be serving at the time, and, subject to the foregoing exceptions, the same authority may vacate the order of suspension at any time and order the execution of the sentence or the suspended part thereof insofar as the same shall not have been previously remitted, subject to like power of suspension. The death or honorable discharge of a person under a suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence.]

REHEARINGS.—When any reviewing or confirming authority disapproves a sentence or when any sentence is vacated by action of the board of review or judicial council and the Judge Advocate General, the reviewing or confirming authority or the Judge Advocate General may authorize or direct a rehearing. Such rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court martial, and no sentence in excess or more severe than the original sentence shall be enforced unless the sentence be based upon a finding of guilty of an offense not considered upon the merits in the original proceeding.

ART. 53. [EXECUTION OR REMISSION—CONFINEMENT IN DISCIPLINARY BARRACKS.—When a sentence of dishonorable discharge has been suspended until the soldier's release from confinement, the execution or remission of any part of his sentence shall, if the soldier be confined in the United States Disciplinary Barracks, or any branch thereof, be directed by the Secretary of War.]

PETITION FOR NEW TRIAL.—Under such regulations as the President may prescribe, the Judge Advocate General is authorized, upon application of an accused person, and upon good cause shown, in his discretion to grant a new trial, or to vacate a sentence, restore rights, privileges, and property affected by such sentence, and substitute for a dismissal, dishonorable discharge, or bad-conduct discharge previously executed a form of discharge authorized for administrative issuance, in any court-martial case in which application is made within one year after final disposition of the case upon initial appellate review: *Provided, That with regard to cases involving offenses committed during World War II, the application for a new trial may be made within one year after termination of the war, or after its final disposition upon initial appellate review as herein provided, whichever is the later: Provided, That only one such application for a new trial may be entertained with regard to any one case: And provided further, That all action by the Judge Advocate General pursuant to this article, and all proceedings, findings, and sentences on new trials under this article, as approved, reviewed or confirmed under articles 47, 48, 49, and 50, and all dismissals and discharges carried into execution pursuant to sentences adjudged on new trials and approved, reviewed, or confirmed, shall be final and conclusive and orders publishing the action of the Judge Advocate General or the proceedings on new trial and all action taken pursuant to such proceedings, shall be binding upon all departments, courts, agencies, and officers of the United States.*



**ART. 70. CHARGES; ACTION UPON [.] UNNECESSARY DELAY.**—[Charges and specifications must be signed by a person subject to military law, and under oath either that he has personal knowledge of, or has investigated, the matters set forth therein and that the same are true in fact, to the best of his knowledge and belief.]

[No charge will be referred for trial until after a thorough and impartial investigation thereof shall have been made. This investigation will include inquiries as to the truth of the matter set forth in said charges, form of charges, and what disposition of the case should be made in the interest of justice and discipline. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available, and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides.]

[Before directing the trial of any charge by general court martial the appointing authority will refer it to his staff judge advocate for consideration and advice.]

When any person subject to military law is placed in arrest or confinement immediate steps will be taken to try the person accused or to dismiss the charge and release him. Any officer who is responsible for unnecessary delay in investigating or carrying the case to a final conclusion shall be punished as a court martial may direct.

[When a person is held for a trial by general court martial, the commanding officer will, within eight days after the accused is arrested or confined, if practicable, forward the charges to the officer exercising general court-martial jurisdiction and furnish the accused a copy of such charges. If the same be not practicable, he will report to superior authority the reasons for delay. The trial judge advocate will cause to be served upon the accused a copy of the charges upon which trial is to be had, and a failure so to serve such charges will be ground for a continuance unless the trial be had on the charges furnished the accused as hereinbefore provided. In time of peace no person shall, against his objection, be brought to trial before a general court martial within a period of five days subsequent to the service of charges upon him.]

**ART. 88. [INTIMIDATION OF PERSONS BRINGING PROVISIONS.]**—Any person subject to military law who abuses, intimidates, does violence to, or wrongfully interferes with any person bringing provisions, supplies, or other necessities to the camp, garrison, or quarters of the forces of the United States shall suffer such punishment as a court martial may direct.]

**UNLAWFULLY INFLUENCING ACTION OF COURT.**—No authority appointing a general, special, or summary court martial nor any other commanding officer, shall censure, reprimand, or admonish such court, or any member thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise, by such court or any member thereof, of its or his judicial responsibility. No person subject to military law shall attempt to coerce or unlawfully influence the action of a court martial or any military court or commission, or any member thereof, in reaching the findings or sentence in any case, or the action of an appointing or reviewing or confirming authority with respect to his judicial acts.

**ART. 89. GOOD ORDER TO BE MAINTAINED AND WRONGS REDRESSED.**—All persons subject to military law are to behave themselves orderly in quarters, garrison, camp, and on the march; and any person subject to military law who commits any waste or spoil, or willfully destroys any property whatsoever [(unless by order of his commanding officer),] or commits any kind of depredation or riot, shall be punished as a court martial may direct. Any commanding officer who, upon complaint made to him, refuses or omits to see reparation made to the party injured, insofar as the offender's pay shall go toward such reparation, as provided for in article 105, shall be dismissed from the service, or otherwise punished, as a court martial may direct.

**ART. 92. MURDER—RAPE.**—Any person subject to military law [who commits murder or rape] found guilty of murder shall suffer death or imprisonment for life, as a court martial may direct; but if found guilty of murder not premeditated, he shall be punished as a court martial may direct. Any person subject to military law who is found guilty of rape shall suffer death or such other punishment as a court martial may direct: Provided, That [but] no person shall be tried by court martial for murder or rape committed within the geographical limits of States of the Union and the District of Columbia in time of peace.

**ART. 93. VARIOUS CRIMES.**—Any person subject to military law who commits manslaughter, mayhem, arson, burglary, housebreaking, robbery, larceny, [embezzlement,] perjury, forgery, sodomy, assault with intent to commit any

felony, assault with intent to do bodily harm with a dangerous weapon, instrument, or other thing, or assault with intent to do bodily harm, shall be punished as a court martial, may direct: *Provided, That any person subject to military law who commits larceny or embezzlement shall be guilty of larceny within the meaning of this article.*

ART. 94. FRAUDS AGAINST THE GOVERNMENT.—Any person subject to military law who makes or causes to be made any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures, or advises the making of use of, any writing or other paper knowing the same to contain any false or fraudulent statements; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes or procures or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

Who for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures, or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures, or advises the use of any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States, or

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence, stores, money, or other property of the United States furnished or intended for the military service thereof; or

Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same; or

*Who enters into any agreement or conspiracy to commit any of the acts aforesaid;*

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties.

[And if any person, being guilty of any of the offenses aforesaid while in the military service of the United States, received his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed. And if any officer, being guilty while in the military service of the United States, of embezzlement of ration savings, post exchange, company, or other funds, or of embezzlement of money or other property entrusted to his charge by an enlisted man or men, receives his discharge, or is dismissed, or is dropped from the rolls, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not been so discharged, dismissed, or dropped from the rolls.] *If any person, being guilty of any of the offenses aforesaid or who steals or fails properly to account for any money or other property held in trust by him for enlisted persons or as its official custodian while in the military service of the United States, receives his discharge or is dismissed or*



otherwise separated from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not been so separated therefrom.

ART. 104. DISCIPLINARY POWERS OF COMMANDING OFFICERS.—Under such regulations as the President may prescribe, the commanding officer of any detachment, company, or higher command, may, for minor offenses, impose disciplinary punishments upon persons of his command without the intervention of a court-martial, unless the accused demands trial by court martial.

The disciplinary punishments authorized by this article may include admonition [;] or reprimand, or the withholding of privileges [for not exceeding one week] or extra fatigue, or restriction to certain specified limits, [for not exceeding one week, and] or hard labor without confinement or any combination of such punishment for not exceeding one week [;] from the date imposed; but shall not include forfeiture of pay or confinement under guard; except that [in time of war or grave public emergency a commanding officer of the grade of brigadier general or of higher grade] any officer exercising general court-martial jurisdiction may [;] under the provisions of this article, also impose upon [an officer of his command below the grade of a major] a warrant officer or flight officer or officer of his command below the rank of brigadier general a forfeiture of not more than one-half of [each officers monthly] his pay per month for [one] three months.

A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense, may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission [;], and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

ART. 108. SOLDIERS—SEPARATION FROM THE SERVICE.—No enlisted person, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, [signed by a field officer of the regiment or other organization to which the enlisted man belongs or by the commanding officer when no such field officer is present;] and no enlisted [man] person shall be discharged from said service before his term of service has expired, except [by order of the President, the Secretary of War, the commanding officer of a department,] in the manner prescribed by the Secretary of War or by sentence of a general or special court martial.

ART. 110. CERTAIN ARTICLES OF WAR TO BE READ OR EXPLAINED.—Articles 1, 2, [and] 24, 28, 29, 54 to 97, inclusive [and] 104 to 109, inclusive and 121 shall be read [and] or carefully explained to every soldier at the time of his enlistment or muster in, or within six days thereafter, and shall be read [and] or explained once every six months to the soldiers of every garrison, regiment, or company in the service of the United States. And a complete text of the Articles of War and of the Manual for Courts-Martial shall be made available to any soldier upon his request for a personal examination.

ART. 116. POWERS OF ASSISTANT TRIAL JUDGE ADVOCATE AND OF ASSISTANT DEFENSE COUNSEL.—An assistant trial judge advocate of a general or special court martial shall be competent to perform any duty devolved by law, regulation, or the custom of the service upon the trial judge advocate of the court. An assistant defense counsel shall be competent likewise to perform any duty devolved by law, regulation, or the custom of the service upon counsel for the accused.

ART. 117. REMOVAL OF CIVIL SUITS.—When any civil or criminal prosecution is commenced in any court of a State of the United States against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the military forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed [in Section 33 of the act entitled, "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911] by law, and the cause shall thereupon be entered on the docket of such district court

[and shall proceed therein as if the cause had been originally commenced in said district court and the said proceedings had been taken in such suit or prosecution in said district court as shall have had therein in said State court prior to its removal, and said district court shall have full power to hear and determine said cause] *which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine said cause.*

ART. 121. COMPLAINTS OF WRONGS.—Any officer or soldier who believes himself wronged by his commanding officer, and upon due application to such commander, is refused redress, may complain [to the general commanding in the locality where the officer against whom the complaint is made is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of:] *to the officer exercising general court-martial jurisdiction over the officer against whom the complaint is made. That officer shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the War Department a true statement of such complaint, with the proceedings had thereon.*

[SEC. 2. That the provisions of Chapter II of this act shall take effect and be in force eight months after the approval of this act: *Provided, That articles 2, 23, and 45 shall take effect immediately.*

[SEC. 3. That all offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the taking effect of Chapter II of this act, under any law embraced in or modified, changed, or repealed by Chapter II of this act, may be prosecuted, punished, and enforced in the same manner and with the same effect as if this act had not been passed.

[SEC. 4. That section 1342 of the Revised Statutes of the United States be, and the same is hereby repealed, and all laws and parts of laws insofar as they are inconsistent with this act are hereby repealed.]

